IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.608 OF 1998

M/s.Top Garments, Bombay ...Plaintiff

Versus

M/s.R.Q.Enterprises, Bombay ...Defendant

Shri Dilip Rai i/by Bansal & Associates for the Plaintiff.

CORAM : ABHAY S.OKA, J.
DATED : JULY 23, 2007.

ORAL JUDGMENT:

1. This suit is kept under the caption of "Undefended Suits for Exparte Decree". The Plaintiff has tendered on record an affidavit of evidence of Mr Akshay Gupta, the Constituted Attorney of the Plaintiff. The said affidavit of evidence is taken on record and marked X" for identification. A compilation of original documents is also tendered on record. The said compilation is marked "Y" (collectively).

2. The suit is for recovery of sum of Rs.02,05,213/- together with interest at the rate of 24 per cent per annum from the date of filing of the suit till realisation. According to the case of the Plaintiff, the Defendant is engaged in the work of fabrication of ready-made garments. The Plaintiff is involved in the business of exporting ready-made

garments to various countries. According to the case made out in the plaint, the Plaintiff received an order for supplying certain garments from one of their clients in Germany. For meeting the said order, the Plaintiff entrusted work of job work of fabrication to the Defendant. It is stated that the Defendant agreed to complete the job within a period of thirty days from the date of delivery the chalan and bill. On the basis of the said representation made by the Defendant, the Plaintiff placed trial order of 716 pieces and issued a fabrication order dated 25th April, 1997 by fixing the dead-line for the work. It is alleged that there was a delay in delivery of the goods. According to the case of the Plaintiff, by registered letters dated 10th May, 1997 and 03rd June, 1997, the Plaintiff called upon the Defendant to pay damages of Rs.02,05,213/-. It is alleged that the Defendant by Advocate's reply dated 19th May, 1997 contended that the goods will not be delivered and were withheld as the Plaintiff has failed to settle the earlier account with the Defendant. Ultimately, the present suit is filed by the Plaintiff for recovery of damages.

3. Alongwith affidavit of evidence of Mr.Akshay Gupta, the original power of attorney executed by the Proprietor of the Plaintiff in favour of the said

witness is produced alongwith compilation of documents. Office copy of the fabrication order and office copy of delivery chalan are also produced on the record. The correspondence made by the Plaintiff is also placed on the record.

4. The case made out in the plaint has been duly proved by the evidence of Mr. Akshay Gupta. The original documents on which the Plaintiff is relying upon are also proved by the said witness. There is no written statement filed by the Defendant. Considering the affidavit of the said Mr.Akshay Gupta and the documents produced on record, there is no reason to deny the claim for damages to the Plaintiff. However, interest will have to be restricted to 6 per cent per annum on the suit claim from the date of the suit.

5. Hence, the suit is decreed in terms of prayer clause (a) with a modification that interest payable will be at the rate of 6 per cent per annum from the date of the suit till the date of realisation or payment. Certified copy is expedited.

JUDGE